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IN THE

Supreme Court of the United States

October Term, 1966

No. 590

THE HORACE MANN LEAGUE OF THE UNITED STATES OF AMERICA, INC., *et al.*,

Appellants,

v.

BOARD OF PUBLIC WORKS OF MARYLAND, *et al.*,

Appellees.

On Appeal from the Court of Appeals of Maryland

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from so much of the final judgment of the Court of Appeals, entered on June 2, 1966 as affirmed the judgment of the Circuit Court of Anne Arundel County upholding the constitutionality of Chapter 88, Maryland Acts of 1962, which grants $500,000 to Hood College to help erect a dormitory and a classroom building. The Appellee Board of Public Works and three other colleges, defendants in the court below, have filed a petition in this Court for a writ of certiorari to review the remaining part of the judgment of the Maryland Court of

Appeals. *Board of Public Works of Maryland* v. *Horace Mann League of the United States,* October Term, 1966, No. 473.

Opinions Below

The opinion of the Circuit Court for Anne Arundel County is unreported. It is printed at pp. 58-79 of Volume I of the joint record extract filed in the court below and with this statement. It is also printed in Appendix B (p. 71a) to the petition in No. 473, to which the Court is respectfully referred. The opinion of the Court of Appeals of Maryland is reported in 242 Md. 645 and is printed in Appendix B (p. 17a) of No. 473.

Jurisdiction

The appellants herein duly filed in the Court of Appeals of Maryland their notice of appeal to this Court on August 15, 1966. The Court of Appeals is the highest court of the State of Maryland and its judgment, entered on June 2, 1966, is in all respects final.

Statute Involved

The statutory provision involved is Chapter 88 of the Acts of the General Assembly of Maryland of 1962. It is printed in the appendix to this Statement.

The Question Presented

May a state, consistently with the First and Fourteenth Amendments to the United States Constitution, grant tax-raised funds for the erection of a dormitory and classroom building by a church-related college whose stated purposes are religious and which characterizes itself as "Christian" and "religiously oriented?"

Statement of the Case

This action was commenced by the Horace Mann League, a non-profit corporation organized for the purpose of fostering and strengthening the American public school system, and thirteen individual taxpayers challenging the validity, under both the Maryland and federal constitutions, of four separate bills enacted by the Maryland legislature to aid four sectarian colleges.

In respect to Hood College, the trial evidence showed the following (references are to the joint record extract):

Its stated purposes are religious and it characterizes itself as "Christian" and "religiously oriented" (E. 212-13, 1317-25). More than 20% of the governing board are appointed by the United Church of Christ and members of that church account for half the board (E. 1105-06, Ans. to Inter. 11). Only one non-Protestant has served on the board since 1958 (Ans. to Inter. 11). The administration is Protestant, with a heavy proportion of U. C. C. members (E. 536). The faculty is largely Protestant, and sympathy with the religious ideals of the college is a require-

The Question Presented is Substantial

At least four times within the past two decades this Court has expressed the basic principles applicable to this case in the following words:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.* Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between Church and State." (Emphasis supplied.) (*Everson* v. *Board of Education*, 330 U. S. 1, 15-16; *McCollum* v. *Board of Education*, 333 U. S. 203, 210-211; *McGowan* v. *Maryland*, 366 U. S. 420, 443; *Torcaso* v. *Watkins*, 367 U. S. 488, 492-493.)

In the latest relevant decision, *School District of Abington Township* v. *Schempp*, 374 U. S. 203, the Court not only quoted this authoritative paragraph in part, but also

quoted with approval the following from the dissenting opinion of Mr. Justice Jackson in the *Everson* case:

> There is no answer to the proposition * * * that the effect of the religious freedom Amendment to our Constitution was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. * * * This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity. (374 U. S. at 215.)

The Maryland Court of Appeals recognized that these principles are determinative of the question in this case; it quoted both the authoritative paragraph and the statement of Mr. Justice Jackson. It applied these principles to declare invalid the grants to the other three colleges, but it held that they do not require a similar determination in respect to Hood College.

We respectfully submit that in this the Court of Appeals was in error. The grant to Hood College does constitute aid to religion and is a tax to support religious activities and a religious institution. It does seek to make the propagation of religion public business supported in part at taxpayers' expense. The Court of Appeals justifies its decision on the ground that "The College's stated purposes in relation to religion are not of a fervent, intense, or passionate nature, but seem to be based largely upon its historical background." (Petition for certiorari in No. 473, p. 43a.) We believe the court below erred in

failing to take the College's own evaluation at its face value; the evidence presented at the trial overwhelmingly supports such evaluation.

Conclusion

The federal question presented by this appeal is substantial and of public importance. It is therefore respectfully submitted that probable jurisdiction should be noted.

Respectfully submitted,

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APPENDIX

CHAPTER 88

(House Bill 86)

AN ACT to authorize the creation of a State debt in the aggregate amount of Five Hundred Thousand Dollars ($500,000), for the purpose of aiding in the construction of a new dormitory, AND a new classroom building ~~and the modernization of the dining room~~ on the campus of Hood College, in Frederick, Maryland, subject to the requirements that the said college on or before January 1, 1964, shall have obtained elsewhere at least an equal and matching sum for the same purposes; and providing generally for the issue and sale of certificates of indebtedness evidencing such loan.

WHEREAS, Hood College in the City of Frederick, has had a long and distinguished career in higher education in this State, having for many years contributed heavily to the education of young women in the State of Maryland; and

WHEREAS, the College urgently needs a new dormitory, new classroom building and the modernization of its dining room; and

WHEREAS, a State appropriation if matched by the College would assure the construction of these needed facili-

EXPLANATION: *Italics indicate new matter added to existing law.*
[Brackets] indicate matter stricken from existing law.
CAPITALS indicate amendments to bill.
Strike out indicate matter stricken out of bill.

ties and at the same time help to relieve the burden of heavy enrollment in the several State-owned colleges in Maryland, now, therefore,

SECTON 1. *Be it enacted by the General Assembly of Maryland,* That the Board of Public Works is hereby authorized and directed to issue a State loan to be known as the "Hood College Loan of 1962", in the aggregate sum of Five Hundred Thousand Dollars ($500,000).

The certificates evidencing said loan may be issued all at one time or, in groups, from time to time, as hereinafter provided. All of said certificates evidencing said loan, or any group thereof, shall be issued according to what is known as the serial annuity plan so worked out as to discharge the principal represented by said certificates within fifteen (15) years from the time of its issue; provided, however, that it shall not be necessary to provide for the redemption of any part of the principal represented by any certificates for the first two (2) years from the time of the issuance of said certificates.

The Board of Public Works shall, and is hereby authorized and empowered to, pass a resolution or resolutions from time to time, determining and setting forth:

(a) The proportion of the total loan authorized by this Act which shall be issued at any particular time;

(b) The form of the certificates representing the loan or any part thereof so authorized to be issued at any particular time, including any interest coupons to be attached thereto, and provisions for the issuance of certificates in

registered form, provisions for the registration of any coupon certificates as to principal of loan and for the reconversion into coupon certificates of any certificates registered as to principal.

(c) The denomination or denominations of the certificates to be issued at any particular time, which may be not less than One Hundred Dollars ($100) but may be in sums of One Hundred Dollars ($100) or any suitable multiple thereof, and the place or places of payment of principal and interest thereof.

(d) The rate of interest of the certificates to be issued at any particular time not exceeding in any case 4% per annum, payable semi-annually.

(e) The date of the certificates issued at any particular time, and within the limits prescribed by Article III, Section 34 of the Constitution of Maryland the redemption dates of said certificates.

The resolution authorizing the issuance of said loan or any portion thereof shall set forth in detail the dates when any of the certificates representing said loan or any portion thereof are to be redeemed and the amount to be redeemed upon such dates, respectively, according to the serial annuity plan applied to said loan as a whole or to the group of certificates evidencing a part of said loan issued at a particular time, as the case may be. Said loan and certificates and every part thereof and the interest payable thereon shall be and remain exempt from State, County and municipal taxation.

SEC. 2. *And be it further enacted,* That the Board of Public Works is hereby authorized and directed to have prepared proper Certificates of Indebtedness of the State in good and sufficient form to aggregate the amount of Five Hundred Thousand Dollars ($500,000), as evidence of such loan; such Certificates of Indebtedness shall bear date as of the time of their issue as provided in Section 1 of this Act. Each of said certificates shall be signed and countersigned in the manner prescribed by Section 3 of Article VI of the Maryland Constitution.

SEC. 3. *And be it further enacted,* That in order to provide for the selling of the Certificates of Indebtedness aforesaid, to be issued under the provisions of this Act, the Board of Public Works is hereby directed to advertise once before the said Certificates of Indebtedness, or any part thereof, shall be issued, in two newspapers published in the City of Baltimore and in such other manner as the Board of Public Works in its discretion may determine, that the Treasurer of this State will be in readiness at a time within twenty (20) days after expiration of said notice to receive bids at such place or places as may be named in said respective advertisements for bonds or Certificates of Indebtedness issued under the provisions of this Act, under such regulations as may be made in the discretion of the Board of Public Works; and the accrued interest between the date of the bonds or Certificates of Indebtedness and the time of sale and delivery of and payments for said bonds or Certificates of Indebtedness shall be adjusted with the purchaser thereof under such regulations as may be made in the discretion of the Board of Public Works; and

upon the day mentioned in said advertisement as the day for opening the bids for the proposals thereby called for, they shall receive such sealed proposals for the purchase of as many of such bonds or Certificates of Indebtedness as may be mentioned or designated in said advertisements; and on the opening of such sealed proposals, as many of said bonds or Certificates of Indebtedness as have been so bid for shall be awarded by the Board of Public Works, to the highest responsible bidder or bidders therefor for cash, if the prices bid are adequate, in the judgment of the Board of Public Works, and when two or more bidders have made the same bid, and such bid is the highest and the Certificates so bid for by the highest responsible bidder are in excess of the whole amount of the Certificates offered for sale, such bonds or Certificates of Indebtedness shall be awarded to such responsible bidders bidding the same price in a ratable proportion; or if any insufficient price be bid for them, they may be subsequently disposed of under the direction of the Board of Public Works at a private sale upon the best terms they can obtain for the same; provided, they shall not be sold at private sale for less than par and accrued interest.

SEC. 4. *And be it further enacted,* That the sum of Ten Thousand Dollars ($10,000), or so much thereof as may be necessary, shall be paid by the Treasurer of the State upon the warrant of the Comptroller out of the proceeds of the sale of said bonds or Certificates of Indebtedness, for the payment of the expense of engraving, printing and other outlays connected with the issue of the loan hereby authorized, and for the payment of the advertising directed

by this Act, and all other incidental expenses connected with the execution of its provisions in connection with said loan.

SEC. 5. *And be it further enacted,* That the actual cash proceeds of the sale of the Certificates of Indebtedness to be issued under this Act shall be paid to the Treasurer of the State upon the warrant of the Comptroller and such proceeds shall be used exclusively for the following purposes, to wit:

The Comptroller shall immediately upon the sale of and payment for said certificates, first return to and credit the Treasury for a sum equivalent to the amount expended as provided for in Section 4 of this Act; the remainder of the proceeds of said loan shall be credited on the books of the State Treasury Department, to be expended as needed by the State, upon approval by the Board of Public Works, for the construction of a new dormitory, a new classroom building, and the modernization of the dining room on the campus of Hood College in Frederick, Maryland.

SEC. 6. *And be it further enacted,* That the payment of any funds under the provisions of this Act toward the cost of construction of a new dormitory, AND a new classroom building, ~~and the modernization of the dining room~~ on the campus of Hood College in Frederick, Maryland, shall be contingent upon the provision by Hood College of at least an equal and matching fund from other sources. The said College shall have until January 1, 1964, to present evidence satisfactory to the Board of Public Works that it has raised at least this equal and matching fund

toward the construction of a new dormitory, AND a new classroom building, ~~and the modernization of the dining room~~. Upon receiving from the Board of Public Works a certification of such suitable evidence on or before January 1, 1964, the Treasurer of the State is hereby authorized, empowered and directed to proceed to spend the proceeds of said loan agreeably to the other provisions of this Act. If such satisfactory evidence of the raising of at least an equal and matching fund is not present to the Board of Public Works on or before January 1, 1964, no funds under the provisions of this Act shall thereafter be paid over to or expended for the construction of a new dormitory, AND a new classroom building, ~~and the modernization of the dining room~~ on the campus of Hood College in Frederick, Maryland.

SEC. 7. *And be it further enacted,* That until all of the interest on and principal of any certificates issued under this Act have been paid in full, there is hereby levied and imposed an annual State tax on each $100 of assessable property at the rate to be determined in the following manner: on or before December 1, 1962, and on or before December 1 in each calendar year thereafter, the Board of Public Works shall certify to the governing bodies of each of the Counties and Baltimore City the rate of State tax on each $100 of assessable property necessary to produce revenues to meet all interest and principal which will be payable to the close of the next ensuing calendar year on all certificates theretofore issued or theretofore authorized by resolution of the Board of Public Works to be issued,

and the governing bodies of each of the Counties and Baltimore City shall forthwith levy and collect such tax at such rate.

All matters committed by this Act to the discretion of the Board of Public Works shall be determined by a majority of said Board.

SEC. 8. *And be it further enacted,* That this Act shall take effect June 1, 1962.

Approved March 23, 1962.

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